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IS THE SENATE UNFAIRLY CONSTITUTED?

THE inequality of representation in the Senate, always a subject more or less disturbing to logical minds, has been pushed into peculiar prominence of late by the contests over the silver and tariff questions, the admission of Utah, and the proposed admission of Arizona, New Mexico and Oklahoma as states. Much has been heard about the unfairness of permitting Nevada, with 45,000 inhabitants, to balance the vote of New York, with 6,000,000. The discussion of this question may seem a purely academic matter, since no state can be deprived of its equal representation in the Senate without its own consent ; but there are various ways in which really flagrant injustice could be corrected. For instance, a constitutional amendment might be adopted, providing that no state should be admitted until it had consented to be satisfied with one senator so long as its population remained under 500,000 ; or, the most populous of the present states might be divided to reduce the discrepancies ; or the number of senators might be reduced to one from each state, and disagreements between the two houses settled by votes in joint convention. The last plan would have advantages of its own, regardless of the merits of the question at present under discussion.

But before anything is done, the public must understand the precise nature of the evils it is proposed to cure. That the influence of the Senate is apt to be pernicious, is unpleasantly obvious ; that the body has become intensely unpopular, is equally true : but the question is, whether these unfortunate facts are due in any degree to the ratio of representation, or whether they must be accounted for on other grounds. It may be on its face a glaring injustice that a combination of the senators from twenty-three states, with a population of 12,401,748, should be able to outvote twenty-one states, with a population of 49,507,158 ; but the question is whether such a combination

ever did or ever could exist. The twenty-three states are situated on the Atlantic, Pacific and Gulf coasts, on the Canadian frontier, among the Rocky and Alleghany mountains and in the Great Basin and the Mississippi valley. Can any issue ever arise which will unite Vermont, Delaware, Florida and Nevada against Massachusetts, Virginia, Georgia and Kansas?

In considering this question I have thought it interesting to examine the records and see what has been our actual experience. I have analyzed the votes in the Senate on a number of the most hotly contested issues that have divided Congress since the foundation of our government, in order to discover whether any line of division between large and small states can be traced, and whether the system of representation in the Senate has had the practical effect of putting that body under the control of popular minorities. This analysis falls a little short of absolute accuracy in one respect, since the early records take no account of pairs. Where only one of a state's Senators is recorded as voting on a question I have counted the state on his side, while it is possible that his colleague may have been paired on the other side, and that therefore the vote of the state should be put down as divided. Such cases, however, are not very common, and doubtless such errors are as a rule so distributed as to offset each other. In all divisions since the Civil War the pairs are included and the results are exact. The votes selected as affording a fair test of the relations of the Senate to the majority of the nation are those on the Alien and Sedition Laws, 1798, the Embargo, 1807, the declaration of war against England, 1812, the incorporation of the Bank of the United States, 1816, the tariff of 1816, the Missouri Compromise, 1820, the tariff of 1824, the tariff of 1828, the renewal of the United States Bank charter, 1832, the establishment of the Independent Treasury, 1840, the attempted reestablishment of the Bank of the United States, 1841, the tariff of 1842, the annexation of Texas, 1845, the tariff of 1846, the fugitive Slave Law, 1850, the Kansas-Nebraska Law, 1854, the Bland-Allison Silver Law, 1878, the substitution of the Republican tariff bill for the Mills Bill, 1889, the McKinley Law,

1890, the abandonment of the Federal Elections Bill, 1891, and the repeal of the silver-purchase clause of the Sherman Silver Law, 1893. The war and reconstruction periods are passed over, because during those times the representation of the states was not complete. The figures of population are taken in each case from the census next preceding the vote, unless a new census came in the same or the following year.

The Alien Law passed the Senate June 8, 1798, by a vote of 16 to 7. The only state that cast a divided vote was North Carolina, with a population of 393,751. On the affirmative side were ranged the states of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware and South Carolina. On the negative were Virginia, Georgia, Kentucky and Tennessee. The eleven states voting in the affirmative had an aggregate population of 2,595,955, or an average of 235,996 each. The four states in the negative had an aggregate population of 939,526, or an average of 234,881 each. The two most populous states voted on opposite sides, and so did the two least populous. The first and the last state in rank acted together. The most populous state had twenty-one times as many inhabitants as the least populous, but the various discrepancies so nicely balanced each other that the average population of all the states on one side of the question and that of all those on the other differed by only 1,115.

The Sedition Law passed the Senate July 4, 1798, by a vote of 18 to 6. Maryland and New Hampshire, with a total population of 461,613 and an average of 230,806, were divided; Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, North Carolina and South Carolina, with a total population of 2,093,720, and an average of 232,635, voted in the affirmative; and Virginia, Kentucky and Tennessee, with 856,978 inhabitants in all and an average population of 285,659, voted in the negative.

To save space and the patience of the reader the catalogue of states in the remaining divisions may be omitted, and the net results reduced to tabular form.

	DIVIDED.	AVE.	No.
Embargo (Dec. 18, 1807).			
States	3	12	2
Total population	1,339,615	3,625,009	315,275
Average population	446,538	302,084	157,637
Declaration of War (June 17, 1812).			
States	5	8	4
Total population	2,500,362	3,893,872	632,307
Average population	500,072	486,734	158,077
Bank incorporation (April 3, 1816).			
States	9	7	2
Total population	3,180,739	2,858,859	1,173,509
Average population	353,415	408,408	586,754
Tariff, 1816 (April 19, 1816).			
States	3	13	2
Total population	1,889,805	4,287,246	936,046
Average population	629,935	329,788	468,023
Missouri Compromise (Feb. 16, 1820). ¹			
States	1	11	10
Total population	147,178	4,293,361	4,512,398
Average population	147,178	390,305	451,240
Tariff of 1824 (May 13, 1824).			
States	2	12	10
Total population	1,616,113	4,074,429	3,907,201
Average population	808,056	339,535	390,720
Tariff of 1828 (May 13, 1828).			
States	4	11	9
Total population	1,181,868	4,695,234	3,700,661
Average population	295,467	426,839	411,184
Bank Charter renewal (June 9, 1832).			
States	5	11	8
Total population	1,555,140	5,054,083	6,115,884
Average population	311,028	459,462	764,485
Independent Treasury (Jan. 17, 1840).			
States	6	11	7
Total population	2,963,441	9,925,202	3,550,373
Average population	493,907	902,291	507,196

¹ Division on the amendment reported by the judiciary committee adding the bill for the admission of Missouri to that for the admission of Maine.

	DIVIDED.	Ave.	No.
Reëstablishing U. S. Bank. Passage of bill over veto, Aug. 19, 1841).			
States	7	10	9
Total population	5,022,651	4,723,160	7,145,296
Average population	717,521	472,316	792,921
Tariff of 1842 (Aug. 27, 1842).			
States	2	11	12
Total population	388,063	8,196,902	7,476,932
Average population	194,031	745,173	623,077
Annexation of Texas (Feb. 26, 1845).			
States	7	10	9
Total population	3,764,878	8,474,959	4,650,970
Average population	537,839	847,496	516,774
Tariff of 1846 (July 28, 1846).			
States	6	11	10
Total population	4,449,290	6,666,738	5,627,145
Average population	741,548	606,067	562,714
Fugitive Slave Law (Aug. 21, 1850).			
States	1	16	9
Total population	2,311,786	9,340,540	5,556,207
Average population	2,311,786	583,783	617,35 ^c
Kansas-Nebraska Law (May 25, 1854).			
States	2	21	8
Total population	1,373,509	14,160,388	7,013,994
Average population	686,754	674,304	876,749
Bland-Allison Silver Law (Feb. 15, 1878).			
States	8	21	8
Total population	5,494,694	22,979,552	8,781,484
Average population	686,836	1,094,264	1,097,685
Substitution of Republican Tariff for Mills Bill (Jan. 22, 1889).			
States	3	18	17
Total population	6,536,426	30,035,186	24,199,128
Average population	2,178,808	1,668,621	1,423,478

	DIVIDED.	Ave.	No.
McKinley Law (Sept. 10, 1890).			
States	3	22	17
Total population	5,048,939	30,896,103	25,686,615
Average population	1,682,979	1,404,368	1,510,977
Sidetacking Federal Elections Bill (Jan. 22, 1891).			
States	5	19 ¹	19
Total population	11,827,745	27,362,704	22,728,457
Average population	2,365,549	1,403,215	1,196,234
Repeal of Silver-Purchase Law (Oct. 30, 1893).			
States	8	21	15
Total population	15,836,129	32,331,452	13,741,335
Average population	1,979,516	1,539,593	916,089

An examination of these tables discloses the fact that, while the most populous state in the Union now has 133 times as many inhabitants as the least populous, the votes on practical questions have been so balanced that in all the twenty-one cases cited there has been only one instance in which the average population of the states ranged on one side has been as much as twice that of the states ranged on the other. In most cases the balance has been quite as even as it would have been with Congressional districts. There is the further interesting fact, which I have not been able to bring out in the tables, that in every case, without exception, the small states have been divided. There is no trace anywhere of that combination of small states against large which is thought to portend danger to our political system. In the latest case analyzed, and the one which has excited the warmest discussion—the vote on the repeal of the Silver Purchase Law—we have Wyoming, Delaware, Rhode Island, New Hampshire, Vermont and Washington on one side, and Nevada, Idaho, Montana, North Dakota, South Dakota and Florida on the other, with Oregon divided. These were the only states

¹ One senator absent and not paired.

having less than 400,000 inhabitants each, and the division among them could hardly have been more even.

Further light upon the principle of equal representation by states may be gained by studying the history of presidential elections. An examination of the records from the beginning shows that if each state had been allowed only one vote, and had cast that vote in accordance with the action really taken by the majority of its electors, the result would have been precisely what it actually was, with but two exceptions, namely, in the election of 1848, when there would have been a tie instead of a majority for Taylor, and in that of 1880, when there would have been another tie, instead of a majority for Garfield. The latter contest beautifully illustrates the harmonious balance of large and small states in our political system. Nineteen states voted for Garfield and nineteen for Hancock—a result most accurately adjusted to the popular vote — 4,449,053 on one side and 4,442,035 on the other.

The fact that several states which happen for the moment to be of small population are situated west of the Missouri River has given the question of senatorial representation a sectional aspect, heightened by the contrast of extreme examples, such as New York and Nevada. It is obvious, however, that since the practical grievance is not single votes but possible control by minorities, no comparison is fair that does not include great groups of states. If we start at the Pacific coast and go eastward until we have taken in half the states in the Union, we find that the twenty-two so included had an aggregate population at the last census of 25,738,747, or an average of 1,169,943 each. The total population of the remaining twenty-two was 36,170,159, and the average 1,644,098. Here is certainly a discrepancy, but one no greater than exists among Congressional and legislative districts in many states. Moreover it is one that is rapidly disappearing with the growth of the West. All of the Western States are immense in area, and almost all are well adapted to support a dense population. The real grievance of the future will be, not that of New York and Pennsylvania against Nevada and Wyoming, but that of

Texas, California, Oregon and Washington against Rhode Island, Delaware, New Hampshire and Vermont.

There is still less ground for present complaints of inequality in representation as between the North and the South. If we draw a line from the Atlantic to the Pacific in such a way that half of the states lie on one side and half on the other, we find that the northern group contains an aggregate population of 33,627,144 and an average of 1,528,506 to each state, while the aggregate of the southern group is 28,281,762 and the average 1,285,534. The approximation to equality becomes even closer if we take a natural instead of an arbitrary line of division. On such a division the twenty-eight states commonly called Northern are found to average 1,421,112, and the sixteen states commonly called Southern 1,388,610 inhabitants each.

There remains another point which is usually overlooked. Each state is commonly regarded as a unit, and therefore, when the senators from New York are outvoted, it is assumed that the wishes of 6,000,000 people are disregarded. But the truth is, of course, that the lines of political cleavage run across state boundaries. It is not the population of a state, therefore, but the size of its popular majority, that determines the moral weight of its support of one policy or another. In 1884, for instance, New York cast 1,171,312 votes for president, and Nevada only 12,771. But in New York the votes of 562,001 Democrats were canceled by those of 562,001 Republicans, while those of 25,001 Prohibitionists, 17,002 Greenbackers and 4,260 unassorted citizens were wholly lost. The thirty-six electoral votes of the state were given to Cleveland by 1,047 men who furnished the Democratic plurality, and if 524 of these had voted the other way, all the thirty-six electors would have gone to Blaine. In Nevada, on the other hand, there was a net Republican majority of 1,615, which was sufficient to cancel the Democratic plurality in New York, with 568 votes to spare. If there had been no states in the Union but these two, there would have been 569,194 popular and three electoral votes for Blaine, against 568,626 popular and thirty-six electoral votes for Cleveland. The 562,001 Republican voters

of New York would have had no representatives in the Electoral College except the three electors from Nevada. Certainly neither Democrats nor Republicans in New York could complain of Nevada's over-representation.

Again, in 1890 New York cast two votes in the Senate in favor of the McKinley Bill, and Florida two against it. Here, apparently, the wishes of 6,000,000 people were neutralized by those of less than 400,000. But the actual fact was that, instead of representing the wishes of 6,000,000 people, the New York senators did not represent a net preponderance of even one voter in their own state. On the contrary, the election held two months later showed that there was a majority of nearly 100,000 against them. The Florida senators, in fact, represented a majority of New Yorkers.

These examples of compensation meet us at every turn. Whenever we look at one point we see injustice, but under a comprehensive view all the minor inequalities are absorbed in a wider justice. There are flagrant defects in the constitution of the Senate, but, so far as present practical conditions are concerned, they do not lie in the ratio of representation. The real weak point is the irresponsibility and consequent infidelity of the individual senators. If each senator were truly representative of his own state, the relative power of the states could safely be left to take care of itself. It was not the "rotten boroughs" that brought reproach upon the Senate during the recent tariff wrangle, but the senators from the great states of New York, New Jersey, Ohio and Maryland. What is needed to prevent a recurrence of such scandals is to make senators continuously and effectively responsible to their constituents, by depriving the legislatures of the power of election and giving the people power to recall unfaithful senators.

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